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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,040	11/17/2003	Richard Heiss	12400-3	4286
7590		12/19/2006	EXAMINER	
James M. Duncan			CANFIELD, ROBERT	
Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP			ART UNIT	PAPER NUMBER
P.O. Box 11172			3635	
Bakersfield, CA 93389-1172				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	12/19/2006	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/716,040	HEISS ET AL.	
	Examiner Robert J. Canfield	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-59 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____.

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1. This is a first Office action on the merits for application serial number 10/716,040 filed 11/17/03. Claims 1-59 are pending.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: outside diameter d_0 . Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **10', 12', 14', 16' and 18'**. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the

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sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7, 10-12, 14-23, 25, 28-30, 32, 36-46, 48, 52, and 54-58 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,157,189 to Farnham.

Farnham provides a power operated crutch (an art equivalent term for a cane) comprised of a second member 14 telescopically received within a first member 12, a ground engaging tip 21, a ball screw 24 and ball nut (col. 2, line 57+), a motor 20, operated by switch 46 and powered by battery 44, a handle 16 and suitable gearing (col. 2, line 70).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 24, 47 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over by U.S. Patent 3,157,189 to Farnham.

Farnham provides each of the elements of these claims except that the housing comprises a thermoplastic material. Farnham is silent to the material. The examiner takes Official Notice that thermoplastics would have been obvious material choices at the time of the invention to one having ordinary skill in the art for use in making the crutch of Farnham. It would have been obvious to have used thermoplastics for their inherent material properties such as light weight, corrosion resistance, and ease in forming.

8. Claims 8, 9, 26, 27, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over by U.S. Patent 3,157,189 to Farnham.

Farnham provides each of the elements of these claims except for calling for stop pins. Farnham discusses the use of stop means at column 3, line 24+ and also discusses that known ball screw and nut devices may be used as the actuator. Freewheeling ball screw/nut assemblies using stop pins are well known and it would have been obvious at the time of the invention to one having ordinary skill in the art to use in the crutch of Farnham to prevent the nut from traveling even when power remains engaged and thus prevent damage which Farnham discusses at column 3, lines 24+.

9. Claims 13, 31, 33, 34, 35, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over by U.S. Patent 3,157,189 to Farnham in view of WO 99/00101.

Farnham provides each of the elements of the claims except that the battery 44 is located within the handle and is rechargeable.

Applicant admits on page 2, line 15 of his specification that one of ordinary skill in the art readily recognize that the battery could be place in many different locations and the WO patent shows that at the time of the invention it was known to provide the battery 15 within the handle. To have placed the battery of Farnham within the handle of Farnham would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art in view of the teaching of the WO patent.

It would have been obvious at the time of the invention to one having ordinary skill in the art that a rechargeable battery (which would inherently have a recharging port) could have been used as the "suitable battery means 44" of Farnham as rechargeable batteries are well recognized equivalent to disposable batteries and are an obvious choice for their inherent benefits to the environment.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield
Primary Examiner
Art Unit 3635

12/10/06

